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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

CENTER FOR BIOLOGICAL  
 DIVERSITY, a non-profit organization,

Plaintiff,

v.

THE OFFICE OF MANAGEMENT AND  
 BUDGET,

Defendant.

**FILED**

AUG 07 2008

RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

No. C 07-4997 MHP

**STIPULATION AND ~~PROPOSED~~  
 ORDER REGARDING SCHEDULE  
 FOR REMAINDER OF THE CASE**

1 IT IS HEREBY STIPULATED by and between the undersigned, subject to the approval  
2 of the Court, that the dates in the Court's Civil Pretrial Minutes dated August 4, 2008 (Docket  
3 No. 37) shall be vacated and replaced with the following schedule for the remainder of this case,  
4 which schedule is subject to further modification as indicated below:

- 5 1. The Office of Management and Budget ("OMB") will use its best efforts to  
6 search for documents among those not already produced or listed on its *Vaughn*  
7 Index for references to the following matters (and in the following order of  
8 priority): "greenhouse gases," the "economic cost of carbon," the "social cost of  
9 carbon," and the "discount rate" and to produce to the Center for Biological  
10 Diversity ("CBD") all responsive documents not subject to withholding under a  
11 FOIA exemption or privilege (including communications internal to OMB to the  
12 extent such communications are not subject to withholding under a FOIA  
13 exemption or privilege) that it has identified using its best efforts by August 15,  
14 2008. OMB will complete this production no later than September 8, 2008.  
15 OMB will not produce a *Vaughn* index concurrently with these productions, but  
16 OMB will include a letter with its productions with information about the search  
17 terms used and number of documents withheld. The *Vaughn* index and relevant  
18 declaration(s) for these documents will be produced as described in Paragraph 3;
- 19 2. OMB will produce to CBD a final *Vaughn* index and supporting declaration(s) for  
20 documents withheld under a FOIA exemption or privilege from the time period of  
21 September 1, 2003 to June 30, 2004 on or before September 15, 2008 (as opposed  
22 to the August 22, 2008 date described in the Court's Civil Pretrial Minutes dated  
23 August 4, 2008);
- 24 3. OMB will complete its response to the FOIA request at issue in this action by  
25 November 3, 2008, including the production of responsive documents not subject  
26 to withholding under a FOIA exemption or privilege (which production will be  
27 made in stages, on September 8, 2008, October 8, 2008 and November 3, 2008),  
28 the production of final *Vaughn* indices (which may be categorical rather than

document by document), and the production of any declaration(s) related to documents withheld under a FOIA exemption or privilege;

4. The Court will hold a Case Management Conference on September 8, 2008 at 3:00 p.m., with a Joint Statement submitted by September 2, 2008. The purpose of the conference will be for the parties to raise any and all issues with regard to this schedule. For example, OMB's current good faith belief is that it will not be able to produce to CBD a final *Vaughn* index and supporting declaration(s) for documents withheld under a FOIA exemption or privilege from the time period of September 1, 2003 to June 30, 2004 on or before September 15, 2008. OMB enters into this stipulation at this time in good faith however, and will use its best efforts to meet this deadline. CBD, on the other hand, believes OMB can and should meet the deadlines agreed to in this stipulation. CBD has sought these documents for more than two years and contends that it has accommodated OMB's prior requests for extensions. CBD would strongly oppose any request for further delay;

5. The parties' cross-motions for summary adjudication as to documents withheld under a FOIA exemption or privilege from the time period of September 1, 2003 to June 30, 2004 shall be filed on October 6, 2008 and the parties shall file any papers opposing the other party's motion for summary adjudication on October 20, 2008; the Court will hold a hearing on November 17, 2008 at 2:00 p.m.; and

6. Three weeks following the Court's ruling on the cross-motions for summary adjudication the parties shall file cross-motions for summary judgment as to any documents withheld under a FOIA exemption or privilege that were not addressed in the first motion for summary adjudication, which motions shall be set for hearing on the Court's first available date for hearing that would give the Court at least two weeks to review all of the briefing, and any papers opposing the other party's motion for summary adjudication shall be filed two weeks after the filing of the cross-motions for summary adjudication.

1 The parties have not previously continued the dates contained in this stipulation.

2 Respectfully submitted,

3 DATED: August 6, 2008

4 By: /s/  
LEAH J. RUSSIN  
Attorneys for Plaintiff

5 JOSEPH P. RUSSONIELLO  
6 United States Attorney

7 DATED: August 6, 2008

8 By: /s/  
MICHAEL T. PYLE  
Assistant United States Attorney  
9 Attorneys for Defendant

10 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

11 The schedule for the remainder of this case, subject to modification by the Court, shall be  
12 as follows:

- 13 1. The Office of Management and Budget ("OMB") shall use its best efforts to  
14 search for documents among those not already produced or listed on its *Vaughn*  
15 Index for references to the following matters (and in the following order of  
16 priority): "greenhouse gases," the "economic cost of carbon," the "social cost of  
17 carbon," and the "discount rate" and to produce to the Center for Biological  
18 Diversity ("CBD") all responsive documents not subject to withholding under a  
19 FOIA exemption or privilege (including communications internal to OMB to the  
20 extent such communications are not subject to withholding under a FOIA  
21 exemption or privilege) that it has identified using its best efforts by August 15,  
22 2008. OMB shall complete this production no later than September 8, 2008.  
23 OMB need not produce a *Vaughn* index concurrently with these productions, but  
24 OMB shall include a letter with its productions with information about the search  
25 terms used and number of documents withheld. The *Vaughn* index and relevant  
26 declaration(s) for these documents shall be produced as described in Paragraph 3  
27 of this Order;  
28 2. OMB shall produce to CBD a final *Vaughn* index and supporting declaration(s)



1 for documents withheld under a FOIA exemption or privilege from the time  
2 period of September 1, 2003 to June 30, 2004 on or before September 15, 2008  
3 (as opposed to the August 22, 2008 date described in the Court's Civil Pretrial  
4 Minutes dated August 4, 2008);

5 3. OMB shall complete its response to the FOIA request at issue in this action by  
6 November 3, 2008, including the production of responsive documents not subject  
7 to withholding under a FOIA exemption or privilege (which production shall be  
8 made in stages, on September 8, 2008, October 8, 2008 and November 3, 2008),  
9 the production of final *Vaughn* indices (which may be categorical rather than  
10 document by document), and the production of any declaration(s) related to  
11 documents withheld under a FOIA exemption or privilege;

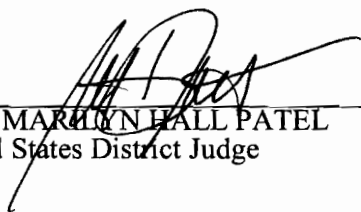
12 4. The Court will hold a Case Management Conference on September 8, 2008 at  
13 3:00 p.m.; a Joint Statement shall be filed by September 2, 2008. The purpose of  
14 the conference will be for the parties to raise any and all issues with regard to this  
15 schedule. The Court recognizes that OMB may request additional time for one or  
16 more of the deadlines in this Order and that CBD would strongly oppose any such  
17 request for further delay, but nevertheless orders OMB to work in good faith and  
18 with its best efforts to meet the deadlines;

19 5. The parties' cross-motions for summary adjudication as to documents withheld  
20 under a FOIA exemption or privilege from the time period of September 1, 2003  
21 to June 30, 2004 shall be filed on October 6, 2008 and the parties shall file any  
22 papers opposing the other party's motion for summary adjudication on October  
23 20, 2008; the Court will hold a hearing on those cross-motions on November 13,  
24 2008 at 2:00 p.m.; and

25 6. Three weeks following the Court's ruling on the cross-motions for summary  
26 adjudication the parties shall file cross-motions for summary judgment as to any  
27 documents withheld under a FOIA exemption or privilege that were not addressed  
28 in the first motion for summary adjudication, which motions shall be set for

1 hearing on the Court's first available date for hearing that would give the Court at  
2 least two weeks to review all of the briefing, and any papers opposing the other  
3 party's motion for summary adjudication shall be filed two weeks after the filing  
4 of the cross-motions for summary adjudication.  
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11 DATED: August 7, 2008

  
HON. MARILYN HALL PATEL  
United States District Judge